

- (1) Claimant has a twenty percent (20%) permanent partial general body work disability.

The Award entered by the Special Administrative Law Judge sets out findings of fact and conclusions of law. It is not necessary to repeat those herein. Having reviewed the entire record, the Appeals Board finds the findings and conclusions, as enumerated in the Award of the Special Administrative Law Judge, to be accurate, appropriate and, with the exception of a computation error made by the Special Administrative Law Judge which will be hereinafter discussed, the Appeals Board adopts said findings and conclusions as its own as if specifically set forth herein. The Appeals Board specifically adopts the analysis of the Special Administrative Law Judge regarding the nature and extent of claimant's disability.

(2) The claimant's average weekly wage is \$273.59.

Although not raised by the parties, the Appeals Board finds that the computation of claimant's average weekly wage does, nevertheless, contain a mathematical error. The Appeals Board agrees with the finding by the Special Administrative Law Judge that claimant's base wage was \$225.75 per week and that the weekly value of claimant's fringe benefits paid for by the employer was \$47.84. However, these figures combine to make a gross average weekly wage of \$273.59 rather than \$272.59, as found by the Special Administrative Law Judge. The Appeals Board would also modify the Award of the Special Administrative Law Judge to conform to the pleadings and find claimant's date of accident to be a series culminating on her last date worked, which is found to be January 22, 1992. With these corrections the Appeals Board adopts the other findings and conclusions of the Special Administrative Law Judge.

Respondent's argument with regard to the issue of claimant's average weekly wage is not with the figures found by the Special Administrative Law Judge. In fact, the \$225.75 base wage and \$47.84 fringe benefit figures were stipulated to by the parties. However, it is the respondent's contention that pursuant to the United States Supreme Court's decision in *District of Columbia v. Greater Washington Board of Trade*, 113 S.Ct. 580, 121 L.Ed. 2d 513 (1992), certain fringe benefits should not be included when calculating claimant's average weekly wage. The Appeals Board finds this argument to be without merit. The District of Columbia case dealt with the subject of preemption. That is, that the federal Employee Retirement Income Security Act (ERISA) 29 USC §1001, et seq., supersedes or preempts the provisions of the Kansas Workers Compensation Act which provide for the value of certain discontinued employer-paid benefits to be included with the base wage used to compute workers compensation benefits. The Appeals Board has previously held that the connection between ERISA and K.S.A. 1991 Supp. 44-511(a)(2)(E) of the Kansas Workers Compensation Act, K.S.A. 44-501, et seq., is tenuous at best and as such the Kansas Workers Compensation Act does not relate to the covered ERISA plans to the extent whereby there would be preemption by the federal act. The Supreme Court of Kansas has reached a similar conclusion in the case of *Lawrence Paper Company v. Gomez*, 257 Kan. 932 (1995). Hence, respondent's argument fails and the stipulated value of the fringe benefits shall be included in the computation of the claimant's average weekly wage.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey, dated April 19, 1994, should be, and hereby is, modified as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Judy K. Morris, and against the respondent, Cherokee County, and its insurance carrier, Insurance Company of North America, for an accidental injury which occurred January 22, 1992 and based upon an average weekly wage of \$273.59, for 38.43 weeks of temporary total disability compensation at the rate of \$182.40 per week or \$7,009.63, followed by 376.57 weeks of permanent partial disability compensation at the rate of \$36.48 per week or \$13,737.27 for a 20% permanent partial general body impairment of function, making a total award of \$20,746.90.

As of October 9, 1995, there is due and owing claimant 38.43 weeks of temporary total disability compensation at the rate of \$182.40 per week or \$7,009.63, followed by 155.14 weeks of permanent partial disability compensation at the rate of \$36.48 per week in the sum of \$5,659.51, for a total of \$12,669.14 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$8,077.76 is to be paid for 221.43 weeks at the rate of \$36.48 per week, until fully paid or further order of the Director.

Unauthorized medical expense of up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of proof of such expense.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed to the respondent to be paid direct as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Martin D. Delmont, C.S.R. Transcript of Preliminary Hearing (3-27-92)	\$148.45
Transcript of Preliminary Hearing (9-25-92)	\$116.15
Transcript of Regular Hearing	\$ 67.75
Deposition of Judy Morris	\$232.85
Deposition of Karen Crist Terrill	\$156.75
Holliday Reporting Service Deposition of Hish S. Majzoub, M.D.	Unkown
Patricia K. Smith, C.S.R. Deposition of Karen Sherwood	\$105.75
Alpha Reporting Service Deposition of Terry Winkler, M.D.	\$174.00

IT IS SO ORDERED.

Dated this ____ day of October 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Carlton W. Kennard, Pittsburg, KS
W. John Badke II, Wichita, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director